

9-73.000 IMMIGRATION VIOLATIONS -- PASSPORT AND VISA VIOLATIONS

- 9-73.010 Immigration Violations -- Supervisory Responsibility**
 - 9-73.020 Immigration Violations -- Guidelines for Undercover Operations**
 - 9-73.100 Immigration Violations -- 8 U.S.C. § 1324**
 - 9-73.200 Immigration Violations -- 8 U.S.C. § 1325-28, 8 U.S.C. § 1253, and 18 U.S.C. § 758**
 - 9-73.300 Immigration Violations -- Immigration Officer Authority**
 - 9-73.400 Immigration Violations -- Reporting of Decisions**
 - 9-73.500 Immigration Violations -- Deportation**
 - 9-73.510 Immigration Violations -- Promise of Non-Deportation**
 - 9-73.520 Immigration Violations -- Deportation of Criminal Aliens**
 - 9-73.600 Passport/Visa Violations -- 18 U.S.C. §§ 1541 to 1546**
 - 9-73.700 Marriage Fraud -- 8 U.S.C. § 1325(c) and 18 U.S.C. § 1546**
 - 9-73.800 Nationality and Citizenship Offenses**
 - 9-73.801 Revocation of Naturalization**
-

9-73.010

Immigration Violations -- Supervisory Responsibility

Supervisory responsibility for criminal immigration violations and related offenses is assigned to the Terrorism and Violent Crime Section, (202) 514-0849. The "S-Visa" classification program, which may be available for certain cooperating illegal aliens and immediate family members, is supervised by the Policy and Statutory Enforcement Unit in the Office of Enforcement Operations, (202) 514-1077. In addition, the Civil Division's Office of Immigration Litigation, (202) 616-4900, may be able to provide assistance on other immigration related issues.

9-73.020 Immigration Violations -- Guidelines for Undercover Operations

The Attorney General's Guidelines on INS Undercover Operations have been in effect since March 19, 1984. The Guidelines recognize that the use of undercover operations is a lawful and essential technique for the detection and investigation of alien-smuggling conspiracies, fraudulent document offenses, and other violations of federal law within jurisdiction of INS. All undercover proposals require that the position of the United States Attorney's office be obtained before the proposal can be approved. With regard to undercover proposals involving specified sensitive circumstances set forth in the guidelines, such proposals are reviewed by the INS Undercover Operations Review Committee, which consists of representatives of INS and the Criminal Division. Before passing on any such proposal, the Committee requires a letter signed by the United States Attorney or a supervisory Assistant United States Attorney, expressly stating that the United States Attorney has personally

reviewed the proposed operation, including the sensitive circumstances reasonably expected to occur; concurs with the proposal, its objectives and legality; and agrees to prosecute any meritorious case that is developed.

A copy of the Attorney General's Guidelines on INS Undercover Operations is in the Criminal Resource Manual at 1901.

9-73.100 Immigration Violations -- 8 U.S.C. § 1324

Title 8, U.S.C. § 1324(a) Offenses	Criminal Resource Manual at 1907
Unlawful Employment of Aliens -- Criminal Penalties	Criminal Resource Manual at 1908
Failure to Disclose Role as Preparer of False Application for Immigration Benefits	Criminal Resource Manual at 1909
Material Witnesses in Alien Smuggling Cases	Criminal Resource Manual at 1910

9-73.200 Immigration Violations -- 8 U.S.C. § 1325-28, 8 U.S.C. § 1253, and 18 U.S.C. § 758

8 U.S.C. § 1325 -- Unlawful Entry, Failure to Depart, Fleeing Immigration Checkpoints, Marriage Fraud, Commercial Enterprise Fraud	Criminal Resource Manual at 1911
8 U.S.C. § 1326 -- Reentry After Deportation (Removal)	Criminal Resource Manual at 1912
8 U.S.C. § 1327 -- Aiding Entry of Certain Criminal or Subversive Aliens	Criminal Resource Manual at 1913
8 U.S.C. § 1328 -- Importing Aliens for Immoral Purposes	Criminal Resource Manual at 1914
Willful Failure or Refusal to Depart	Criminal Resource Manual at 1915
High speed Flight From Immigration Checkpoint	Criminal Resource Manual at 1916

9-73.300 Immigration Violations -- Immigration Officer Authority

For a discussion of an Immigration Officer's authority to conduct arrests, searches, and seizures, see the Criminal Resource Manual at 1917. Information on arrests of illegal aliens by state and local officers can be found in the Criminal Resource Manual at 1918.

9-73.400 Immigration Violations -- Reporting of Decisions

The outcome of all important prosecutions arising under the immigration and nationality laws should be reported to the Terrorism and Violent Crime Section. In all cases in which the decision is adverse to the government, except criminal cases in which no appeal is allowed by law, copies of the pleadings and other documents, except insofar as previously supplied to the Section, should be promptly submitted along with an appeals recommendation. *See* USAM 9-2.170 (appeals).

9-73.500 Immigration Violations -- Deportation

On April 28, 1995, the Attorney General issued a memorandum to all federal prosecutors entitled *Deportation of Criminal Aliens*. See the Criminal Resource Manual at 1919. A copy of this Memorandum is reproduced in the Criminal Resource Manual at 1920 through 1941:

Attorney General Memorandum -- Introduction	Criminal Resource Manual at 1920
Stipulated Administrative Deportation in Plea Agreements	Criminal Resource Manual at 1921
Deportation as a Condition of Supervised Release -- Introduction and Background	Criminal Resource Manual at 1922
Deportation as a Condition of Supervised Release -- Usefulness of the Provision	Criminal Resource Manual at 1923
Deportation as a Condition of Supervised Release -- Procedures	Criminal Resource Manual at 1924
Deportation as a Condition of Supervised Release -- the Situation in the Eleventh Circuit	Criminal Resource Manual at 1925
Judicial Deportation -- Statutory Provisions	Criminal Resource Manual at 1926
Judicial Deportation -- Special Considerations Requiring Corrective Legislation	Criminal Resource Manual at 1927
Implementing Judicial Deportation -- General Concerns	Criminal Resource Manual at 1928
Stipulated Judicial Deportation	Criminal Resource Manual at 1929
Contested Judicial Deportation	Criminal Resource Manual at 1930
Appendix A -- Contact List	Criminal Resource Manual at 1931
Appendix B -- Plea Agreement Form -- Basis for Deportation is an Offense to Which the Defendant Will Plead Guilty	Criminal Resource Manual at 1932
Appendix C -- Plea Agreement Form -- Basis for Deportation is Unrelated to Offense to Which the Defendant Will Plead Guilty	Criminal Resource Manual at 1933
Appendix D -- Grounds for Judicial Deportation	Criminal Resource Manual at 1934
Appendix E -- Notice of Intent to Request Judicial Deportation	Criminal Resource Manual at 1935
Appendix F -- Factual Allegations in Support of Request for Judicial Order of Deportation (Aggravated Felony)	Criminal Resource Manual at 1936
Appendix G -- Factual Allegations in Support of Request for Judicial Order of Deportation (CIMT)	Criminal Resource Manual at 1937
Appendix H -- Factual Allegations in Support of Request for Judicial Order of Deportation (Multiple CIMT)	Criminal Resource Manual at 1938
Appendix I -- Relief From Deportation	Criminal Resource Manual at 1939
Appendix J -- Plea Agreement Forms for Stipulated Deportations	Criminal Resource Manual at 1940
Attorney General's Working Group	Criminal Resource Manual at 1941

9-73.510 Immigration Violations -- Promise of Non-Deportation

In a criminal case, the United States Attorney should not, as part of a plea agreement or an agreement to testify, or for any other reason, promise an alien that he/she will not be deported, without prior authorization from the INS District Director. See also USAM 9-15.800, which requires that such agreements be approved by the

Assistant Attorney General of the Criminal Division, and USAM 9-16.000 which provides additional general information relating to plea agreements in criminal cases.

9-73.520 Immigration Violations -- Deportation of Criminal Aliens

All deportable criminal aliens should be deported unless extraordinary circumstances exist. Accordingly, absent such circumstances, Federal prosecutors should seek the deportation of deportable alien defendants in whatever manner is deemed most appropriate in a particular case. Exceptions to this policy must have the written approval of the United States Attorney or a designated supervisory Assistant United States Attorney. In cases handled exclusively by one of the Department's litigating divisions, an exception to the policy must have the written approval of the appropriate Assistant Attorney General or Deputy Assistant Attorney General. The means of effecting the deportation of criminal alien defendants include: (1) using stipulated administrative deportation orders in connection with plea agreements; (2) providing for deportation as a condition of supervised release under 18 U.S.C. § 3583(d); and (3) seeking judicial deportation orders pursuant to the judicial deportation statute, formerly 8 U.S.C. § 1252a(d), recodified by Section 374 of the Illegal Immigration Reform and Immigrant Responsibility Act at 8 U.S.C. § 1228(c). See USAM 9-73.500 and the Attorney General's April 28, 1995 Memorandum to All Federal Prosecutors, captioned Deportation of Criminal Aliens.

It should be noted that in the above mentioned memorandum, the Attorney General instructed federal prosecutors that to obtain stipulations to deportation they may agree to recommend a one or two level downward departure from the applicable sentencing range in return for the alien's concession of deportability and agreement to accept a final order of deportation. Such downward departure is justified on the basis that it is conduct not contemplated by the guidelines.

9-73.600 Passport/Visa Violations -- 18 U.S.C. §§ 1541 to 1546

18 U.S.C. §§ 1541 to 1546 -- Passports and Other Entry Documents	Criminal Resource Manual at 1942
18 U.S.C. § 1541 -- Issuance of Passports Without Authority	Criminal Resource Manual at 1943
18 U.S.C. § 1542 -- False Statement in Application for Passport and Use of a Passport Fraudulently Obtained	Criminal Resource Manual at 1944
18 U.S.C. § 1543 -- Making or Using a Forged Passport	Criminal Resource Manual at 1945
18 U.S.C. § 1544 -- Misuse of a Passport	Criminal Resource Manual at 1946
18 U.S.C. § 1546 -- Fraud and Misuse of Visas, Permits, and Related Documents, and False Personation	Criminal Resource Manual at 1947

9-73.700 Marriage Fraud -- 8 U.S.C. § 1325(c) and 18 U.S.C. § 1546

For a discussion of marriage fraud, see the Criminal Resource Manual at 1948.

9-73.800 Nationality and Citizenship Offenses

For a discussion of nationality and citizenship offenses, see the Criminal Resource Manual at 1949.

9-73.801 Revocation of Naturalization

No suit to revoke naturalization under 8 U.S.C. § 1451 shall be instituted by a United States Attorney without prior consultation with the Office of Immigration Litigation in the Civil Division. Attorney General's

Order No. 851-79 (9/4/79) confers upon the Criminal Division's Office of Special Investigations (OSI) the authority to prepare, initiate and conduct denaturalization proceedings in all federal districts against individuals who, prior to and during World War II, participated in persecution in association with the Nazi government or its allies. OSI may institute denaturalization cases without consulting the Office of Immigration Litigation.